

RECORDING REQUESTED
BY CITY OF SAN JOSE:

When Recorded, Return To:
City of San José
200 East Santa Clara Street
San José, CA 95113
Attn: City Clerk, 2nd Floor West Wing

Final Tract Map No. 10160

**PARKLAND AGREEMENT
FOR
Final Tract Map No. 10160
BETWEEN
CITY OF SAN JOSE
AND
THE FLEA MARKET, INC., BUMB & ASSOCIATES, BGT DEVELOPMENT, LLC,
AND KB HOME SOUTH BAY INC.**

This Agreement ("Agreement") is made and entered into by and among the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and THE FLEA MARKET, INC., a California Corporation; BUMB & ASSOCIATES, a California General Partnership; and BGT DEVELOPMENT, LLC, a California Limited Liability Company (collectively "Owner1"), and KB HOME SOUTH BAY INC., a California Corporation ("Owner2") as of the date of City's execution ("Effective Date"). Owner1 and Owner2 are collectively referred to in this Agreement as "Owner". Each of City and Owner are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

- A. Owner desires to develop a mixed use transit village on certain real property located on both sides of Berryessa Road, between the Union Pacific Railroad Right of Way to the east and the Coyote Creek to the west, north of Mabury Road (1590 Berryessa Road), in the City of San José, County of Santa Clara, State of California ("Development Site"). City Council adopted Ordinance Number 28657, Planned Development Zoning File Number PDC09-006 on October 20, 2009 authorizing the rezoning of the Development Site to allow construction of up to 2,818 residential units and up to 365,622 square feet of commercial uses on a 120.4 gross acre site ("Rezoning"). A map of the Development Site is attached to this Agreement as Exhibit A.
- B. Owner1 obtained Master Planned Development Permit File Number PD08-025 ("Master PD Permit") on December 3, 2010 for design and construction and phasing of public improvements to support the future Development Site. The Master PD Permit requires Owner to obtain a Planned Development Permit ("PD Permit") and/or Planned Development Permit Amendment ("PD Permit Amendment") for each phase of the project.
- C. Owner1 received approval for Tentative Map Number PT08-019 (the "Phase 1 Tentative Map") by the City's Planning Department for the reconfiguration of real property on the north side of Berryessa Road from three (3) lots into one hundred forty-four (144) lots. Owner1 also received approval for Tentative Map Number PT12-026 (the "Phase 2 and Phase 3 Tentative Map") authorizing construction of additional residential units as further set forth in the Phase 2 and 3 Tentative Map. Each of said Tentative Maps authorizes the construction of a mixed-use transit-oriented development on the north side of Berryessa Road that includes a total of seven hundred thirty-seven (737) residential units. The Phase 1 Tentative Map authorizes the construction of up to two hundred forty-two (242) residential units and the filing of multiple final maps for each phase of the project under the Phase 1 Tentative Map. The Phase 2 and 3 Tentative Map authorizes

the construction of up to four hundred ninety-five (495) residential units and the filing of multiple final maps for each phase of the project under the Phase 2 and 3 Tentative Map.

- D. Owner1 has applied for the approval of Final Tract Map No. 10160 ("Final Map") and obtained PD Permit File No. PD08-027 (the "PD Permit") for the development of a certain portion of the real property covered by the Phase 1 Tentative Map to allow for the construction of up to two hundred forty-two (242) residential units (44 attached, 78 detached and 120 multi-family 5+ units) on a 9.5 net acre site. Owner2 purchased from Owner1 a portion of the Final Map area identified as Blocks 2, 4, 5 and 6 of the PD Permit. By separate agreement, Owner1 has agreed to sell, and Owner2 has agreed to buy a portion of the Final Map area identified as Blocks 1 and 3 of the PD Permit, on the terms stated in that separate agreement.
- E. Under the provisions of Chapter 19.38 of the San José Municipal Code ("Parkland Dedication Ordinance"), owners of residential subdivisions are required to dedicate property for neighborhood and community parks, construct park or recreational improvements and/or pay in-lieu fees ("Parkland Dedication Obligation").
- F. In order for Owner to satisfy Owner's Parkland Dedication Obligation for the residential units identified on the Final Map, Owner and City desire to enter into this Agreement for Owner to satisfy Owner's Parkland Dedication Obligation as follows:
 - 1. Owner1 shall dedicate 3.59 acres of real property to City as depicted in **Exhibit B** for park purposes and as further described in this Agreement; and
 - 2. Owner2 shall construct trail improvements and Owner1 and Owner2 shall dedicate the fully constructed trail improvements and the Trail Site to City as depicted in **Exhibit B** and as further described in this Agreement.

- G. The Parties acknowledge that Owner will exceed its Parkland Dedication Obligation for the residential units identified on the Final Map if Owner fully and timely complies with all terms, conditions and obligations of this Agreement. If Owner fully complies with this Agreement, excess parkland dedication credit as identified in **Exhibit C**, may be applied to future Parkland Dedication Obligation relating to future construction of residential units under the Phase 1 Tentative Map and/or the Phase 2 and 3 Tentative Map by Owner1. City and Owner1 will enter into subsequent parkland agreement(s) for subsequent phases of residential construction and apply any authorized excess parkland dedication credit set forth in **Exhibit C** to the future phases under the Phase 1 Tentative Map and/or the Phase 2 and 3 Tentative Map.
- H. The Parties further acknowledge and agree that the distinction made between Owner1 and Owner2 in this Agreement is solely made to allow Owner1 and Owner2 to divide between themselves the collective obligations of Owner under this Agreement; however, notwithstanding anything contrary in this Agreement, the terms, conditions, and obligations of this Agreement are joint and several as to each Owner party regardless of whether the Agreement assigns a particular condition or obligation to Owner, Owner1 or Owner 2. For avoidance of any doubt, any failure of Owner1 or Owner2 to perform or satisfy any term, condition, or obligation of this Agreement shall be a failure of both Owner1 and Owner2 to perform under this Agreement and City may take any available legal remedies to enforce this Agreement against Owner1, Owner2, or both.
- I. The Parties desire to enter into this Agreement to set forth the roles and responsibilities of Owner in satisfying its Parkland Dedication Obligations for the Final Map.
- J. City's Director of Parks, Recreation and Neighborhood Services ("City's Director") is charged with the administration of this Agreement in conjunction with the Director of Public Works ("Director of PW"). The Director of PW is

responsible for the review, inspection, approval, and acceptance of the Trail Improvements.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. REPRESENTATIONS AND WARRANTIES OF OWNER.

Owner represents and warrants to City that the following facts are true and correct:

- A. The statements and certificates made on the Final Map and documents filed in conjunction with the Final Map remain true and correct.
- B. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no inaccuracies or misstatements of fact. Owner covenants that at such time as City notifies Owner of City's intention to accept the Park Site or Trail Improvements, if any of these documents contain inaccuracies, misstatements or have become obsolete, Owner, shall notify City and provide City with the information required to render the documents accurate, complete and current.
- C. Owner has the legal ability to enter into this Agreement and Owner's signatory(ies) to this Agreement is (are) duly authorized to sign this Agreement on its behalf. In the event the Owner is not the legal owner of the real property identified on the Final Map, the legal owner shall also be required to execute this Agreement and shall be subject to all terms, conditions, and obligations of this Agreement. Notwithstanding any other provision in this Agreement, each Owner party to this Agreement shall be jointly and severally responsible and liable for each term, condition, and obligation of this Agreement.

SECTION 2. OFFER OF DEDICATION; DESIGN AND DEVELOPMENT OF TRAIL IMPROVEMENTS.

- A. Owner1 affirms its irrevocable offer to dedicate by grant deed to City (i) approximately 3.59 acres of real property designated as LOT B, Public Park ("Park Site") as identified on the Final Map and as shown on the attached **Exhibit B** ("Park Site") and (ii) approximately .34 acres of real property as identified on the Final Map and shown on the attached **Exhibit B** ("Trail Site"). Owner shall be responsible for all costs incurred in the conveyance of the Park Site and Trail Site to City in accordance with the requirements and specifications set forth in this Agreement.
1. Owner1 shall dedicate the Park Site and Trail Site to City on or before May 30, 2016.
 2. Owner1 shall comply with the requirements related to the condition of the Park Site set forth in **Exhibit D** and Trail Site set forth in **Exhibit E** prior to City's Director's acceptance of the Park Site and Trail Site. The Park Site dedicated to the City shall be: (1) in a clean, graded condition, without any structures or improvements on the Park Site; (2) free and clear of any encumbrances, restrictions, or covenants affecting title or land use, except as provided for in **Exhibit D**; and (3) free of any Hazardous Materials as set forth in **Exhibit D** of this Agreement. The Trail Site dedicated to the City shall be: (1) fully constructed as set forth in this Agreement; (2) free and clear of any encumbrances, restrictions, or covenants affecting title or land use, except as provided for in **Exhibit E**; and (3) free of any Hazardous Materials as set forth in **Exhibit E** of this Agreement.
- B. The Final Map shall include an irrevocable offer of dedication of land for the Park Site and Trail Site subject to City approval.
- C. Owner2 shall be responsible for the development of plans and specifications for, and the construction of the Trail Improvements on the

Trail Site as more particularly described in this Agreement. Owner2 shall develop plans and specifications for the Trail Improvements ("Project Specifications") for the review and approval of the Director of PW, as more particularly described in the attached **Exhibit E**. Subject to **Exhibit E** of this Agreement, Owner2 shall construct the Trail Improvements in conformance with the Project Specifications and all applicable standards and specifications in effect on the Effective Date of this Agreement.

- D. City and Owner2 acknowledge that the exact size, dimensions, and other particular characteristics of the Trail Improvements have not been determined as of the Effective Date of this Agreement. City and Owner2, however, agree that the Trail Improvements shall consist of the following specific Trail Improvements: 8 feet wide asphalt path with 2 feet gravel shoulder on each side of trail section that meets City's storm water requirements separated from street by 4 feet wide park strip; centerline striping and signage throughout the trail that meet the specifications provided by the City; decorative paved trail entry with vertical architectural feature, bench and other signage per City trail guidelines; large entry plaza with interpretive signage with style and content per the City trail guidelines ("Trail Improvements"), all as depicted above and in **Exhibit B** ("Trail Site").
- E. Owner2 shall be responsible for all costs incurred for planning, design, construction, and supervision of the construction of all Trail Improvements, including without limitation, City's plan review and inspection. Owner2 shall cause all labor and material incorporated in the Trail Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement.
- F. The Trail Improvements to be installed on the Trail Site shall be completed on or before the date of May 30, 2016. The Trail Improvements shall be deemed completed and accepted by City upon recordation of the Notice of

Acceptance by Director of PW as outlined in **Exhibit E** of this Agreement. The City's Director may, at the City Director's discretion, grant extensions of the completion requirement specified in this subsection.

SECTION 3. COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE.

- A. City acknowledges and agrees that Owner's performance of this Agreement shall satisfy Owner's obligations under the City's Parkland Dedication Ordinance for the residential units identified on the Final Map. Provided that Owner is not in material default hereunder, and provided further that Owner satisfies all other terms, conditions, and requirements associated with the Final Map as a condition to the issuance of building permits, City shall issue all building permits necessary for the residential units identified on the Final Map.
- B. The Parties acknowledge and agree that the calculation of the Owner's Parkland Dedication Obligation for the Final Map is set forth in **Exhibit C**.
- C. In the event there is an increase in the number of residential units to be built within the Final Map area, or change in the dwelling unit type, Owner agrees to immediately notify the City's Director and to pay such additional Parkland Fees as are required by the Parkland Dedication Ordinance.
- D. Owner acknowledges that the costs and expenses for the design, development, construction, and supervision related to the Trail Improvements and dedication of the Park Site may exceed the Parkland Fees that the Owner would be obligated to pay under the Parkland Dedication Ordinance. Because of the benefit to the Development Site that will result from the Trail Improvements and Park Site dedication, Owner2 agrees to design, develop, and construct the Trail Improvements on the Trail Site and Owner1 agrees to dedicate the Park Site as specified in this Agreement, without any obligation on the part of City.

- E. The Parties acknowledge and agree that Owner will exceed its Parkland Dedication Obligation for the residential units identified on the Final Map if Owner fully and timely comply with all terms, conditions and obligations of this Agreement. Any excess parkland dedication credit, as identified on **Exhibit C**, may be applied by Owner1 to future Parkland Dedication Obligation specifically for future construction of residential units under the Phase 1 Tentative Map and/or the Phase 2 and 3 Tentative Map. City and Owner1 will enter into subsequent parkland agreement(s) for future phases of residential construction of the Phase 1 Tentative Map and/or Phase 2 and 3 Tentative Map and apply any authorized excess parkland dedication credit set forth in **Exhibit C** to the future phases. In the event Owner does not completely build all of the residential units authorized under the Phase 1 Tentative Map or Phase 2 and 3 Tentative Map or the type of units authorized under the Phase 1 Tentative Map or Phase 2 and 3 Tentative Map, City shall owe no refund to Owner. In no event shall City owe any refund whatsoever to Owner under this Agreement.

SECTION 4. REVIEW FEES AND CHARGES RELATED TO TRAIL IMPROVEMENTS.

- A. Owner2 shall pay to City a fee for review and approval of the Project Specifications for the Trail Improvements and the inspection of the Trail Improvements (collectively, "Review Fee"). City's Review Fee shall be based on Owner2's cost estimate for the Trail Improvements, as approved by the Director, and shall be calculated based on the fees and charges established for City's review and inspection of like improvements then in effect at the time Owner2 executes this Agreement. The current estimated Review Fee is Thirty Three Thousand Three Hundred Dollars (\$33,300.00). The total Review Fee shall be paid directly to City prior to, or concurrently with, the execution of this Agreement.
- B. In the event that the City's Director grants an extension of the term of this Agreement pursuant to the provisions of Section 2.F above or if the

Review Fee paid pursuant to Section 4.A above is insufficient for City's review and inspection as set forth herein, then the Director of PW, at the Director of PW's sole discretion, shall have the right to escalate the total estimated cost of the Trail Improvements, and/or the corresponding Review Fee. The escalation of the total estimated cost of the Trail Improvements shall be based on the Engineering News Record Construction Cost Index, or in the event that the Engineering News Record discontinues publication during the term of this Agreement, an index of similar repute and reliability as determined and selected by Director of PW.

SECTION 5. BONDS AND SECURITY.

Owner2 shall furnish to City the following security prior to the execution of this Agreement and for the purposes, in the amounts, and under the conditions that follow:

A. Type and Amounts.

1. Performance Security. To assure the Owner2's faithful performance of this Agreement to complete the Trail Improvements in an amount of One Hundred Percent (100%) of the estimated cost of the Trail Improvements (hereinafter "Performance Security"); and
2. Payment Security. To secure Owner2's payment to any contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials for completion of the Trail Improvements in the additional amount of One Hundred Percent (100%) of the estimated cost of the improvements (hereinafter "Payment Security"); and
3. Warranty Security. To warranty the Owner2's work for a period of one (1) year following recordation of the Notice of Acceptance against any defective work or labor done or defective materials furnished in the additional amount of Twenty-Five Percent (25%) of the estimated cost of the improvements (hereinafter "Warranty Security"); and

4. Landscaping Security. To secure Owner2's installation and maintenance of landscaping as may be required by the Project Specifications, at such time when the drought restrictions have been rescinded as further described in Section 2(F)(3) of Exhibit F (hereinafter "Landscaping Security").

B. Conditions.

1. Owner2 shall provide the required security on forms approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance. Any bonds furnished by Owner2 to satisfy the security requirements in this Section 5 shall be in the forms attached hereto as Exhibit F, as may be amended by City from time to time.
2. A condition of the Owner2's security is that any changes not exceeding ten percent (10%) of the original estimated cost of the Trail Improvements shall not relieve the security. In the event that changes to the Improvement Plans cause an increase of more than ten percent (10%) over the original estimated cost of the Trail Improvements, Owner2 shall provide security as required by Section 5(A) of the Agreement for One Hundred Percent (100%) of the total estimated cost of the Trail Improvements as changed.
3. Notwithstanding Section 5(B)(2) above, Owner2's security shall compensate City for the actual cost of completing the required Trail Improvements in the Event of Default, as defined in Section 6 below, by Owner2 in the performance of this Agreement, regardless of whether City's cost of completion exceeds the estimated total cost of the Trail Improvements.
4. A condition of Owner2's security is that any request by Owner2 for an extension of time for the commencement or completion of the work under this Agreement may be granted by City without notice to Owner2's surety

and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.

5. As a condition of granting any extension for the commencement or completion of the work under this Agreement, Director of PW may require Owner2 to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by Director of PW.
6. If Owner2 seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by Owner2 to Director of PW; and (3) upon its written acceptance by Director of PW, be deemed to be a part of this Agreement. Upon Director of PW's acceptance of a replacement security, the former security may be released by City.

C. Release of Securities. City shall release the securities required by this Agreement as follows:

1. Performance Security. City shall release the Performance Security upon recordation of the Notice of Acceptance or as may otherwise be authorized in accordance with California Government Code Sections 66499.7(a)-(g).
2. Payment Security. City shall release the Payment Security in accordance with California Government Code Section 66499.7(h).
3. Warranty Security. City shall release the Warranty Security upon expiration of the warranty period and settlement of any claims filed during the warranty period.
4. City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

D. Injury to Trail Improvements, Public Property or Public Utility Facilities. Until recordation of the Notice of Acceptance of the Trail Improvements, Owner2 assumes responsibility for the care and maintenance of, and any damage to, the

Trail Improvements. Owner2 shall replace or repair all Trail Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless of whether resulting from the acts of the Owner2, prior to the recordation of the Notice of Acceptance. Owner2 shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the Director of PW.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss, or damage, regardless of cause, occurring to the work or Trail Improvements prior to recordation of the Notice of Acceptance of the work or improvements.

SECTION 6. DEFAULT.

A. Owner shall be in default hereunder upon the occurrence of any one or more of the following events ("Event of Default"):

1. Owner's failure to dedicate the Park Site to the City as required under this Agreement;
2. Owner's failure to timely commence construction of Trail Improvements under this Agreement;
3. Owner's failure to timely complete construction of the Trail Improvements under this Agreement;
4. Owner's failure to timely cure any defect in the Trail Improvements;
5. Owner's failure to perform substantial construction work for a period of twenty (20) calendar days after commencement of the work;

6. Owner's insolvency, appointment of receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Owner fails to discharge within thirty (30) days;
 7. Owner assigns this Agreement in violation of Section 9;
 8. Owner fails to perform or satisfy any other term, condition, or obligation under this Agreement.
- B. If an Event of Default occurs with respect to the construction of the Trail Improvements and the Event of Default is not cured by Owner in accordance with Section 6(C) below, City in its sole discretion shall be entitled to terminate Owner's control over the work described herein and hold Owner and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Owner. Owner acknowledges and agrees that City's right to draw upon or use the security is in addition to any other remedies available at law or in equity to City. The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of the Trail Improvements, and therefore, City's damages in the Event of Default by Owner shall be measured by the actual cost of completing the required Trail Improvements to the satisfaction of City. City may use the sums provided by the securities for the completion of the Trail Improvements in accordance with the Project Specifications.

City may take over the work and complete the Trail Improvements, by contract or by any other method City deems appropriate, at the sole cost and expense of Owner. In such event, City, without any liability whatsoever, may complete the Trail Improvements using any of Owner's materials, appliances, plans, or other property located at the Trail Site and that are necessary to complete the Trail Improvements.

- C. Unless the City's Director determines that the circumstances warrant immediate enforcement of the provisions of this Section 6 in order to preserve the public health, safety, and welfare, the City's Director shall give twenty (20) working days' prior written notice of termination to Owner ("Notice Period"), which notice shall state in reasonable detail the nature of Owner's default and the manner in which Owner can cure the default. During the Notice Period, Owner shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Owner shall be deemed to have timely cured such default for purposes of this section if Owner commences to cure the default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter.
- D. If an Event of Default occurs, Owner agrees to pay any and all costs and expenses incurred by City in securing performance of such terms, conditions, or obligations giving rise to the Event of Default, including but not limited to, fees and charges of architects, engineers, contractors, attorneys, and other professionals, and court costs.
- E. City's rights and remedies specified in this Section 6 shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity.

SECTION 7. INDEMNITY/HOLD HARMLESS.

City, or any officer, employee, or agent thereof shall not be liable for any loss or injury to persons or property occasioned by reason of the acts or omissions of Owner, its agents, employees, contractors, or subcontractors in the performance of this Agreement. Owner further acknowledges and agrees to protect, indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all liability, loss, cost and obligations on account of or arising out of or resulting from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to the activities performed by Owner under this Agreement, except to the extent such

RD:JVP
05/02/13

injury or harm is caused by the sole active negligence or willful misconduct of City, its officers, agents, or employees. This Section 7 shall survive the recordation of the Notice of Acceptance, acceptance of the Park Site and the Trail Improvements, or sooner termination of this Agreement. Recordation of the Notice of Acceptance by City of the Trail Improvements shall not constitute an assumption by City of any responsibility or liability for any loss or damages covered by this Section 7.

Owner shall reimburse City for all costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section 7.

SECTION 8. NOTICES.

Any notice required or permitted to be given under this Agreement shall be in writing and personally served or sent by U.S. mail, postage prepaid, addressed as follows:

To City's Director: City of San José
Department of Parks, Recreation and Neighborhood Services
Attn: PRNS Parks Planning Division Manager
200 East Santa Clara Street, Tower-9th Floor
San José, CA 95113

To Director of PW: City of San José
Department of Public Works
Attn: PW Division Manager
200 East Santa Clara Street, Tower-6th Floor
San José, CA 95113

To Owner: KB HOME SOUTH BAY INC., a California Corporation
Attn: Jeffrey McMullen, SVP Land Acquisition
5000 Executive Pkwy, Ste 125
San Ramon, CA 94583-4349

THE FLEA MARKET, INC., a California Corporation
Attn: Brian Bumb, President
1590 Berryessa Road
San Jose, CA 95113

BUMB & ASSOCIATES, a California General Partnership

RD:JVP
05/02/13

Attn: Brian Bumb, Managing General Partner
1590 Berryessa Road
San Jose, CA 95113

BGT DEVELOPMENT, LLC, a California Limited Liability
Company
Attn: Brian Bumb, Managing Member
1590 Berryessa Road
San Jose, CA 95113

Notice shall be deemed given upon receipt. The Parties shall notify each other of changes in either their respective addresses or their representatives subject to notification in accordance with the provisions of this section.

SECTION 9. ASSIGNMENT.

This Agreement may not be assigned or transferred in part or in whole by Owner without the express written consent of City. Any attempts to assign or transfer any terms, conditions or obligations under this Agreement without the express written consent of City shall be voidable at City's sole discretion.

SECTION 10. BINDING UPON SUCCESSORS.

Subject to Section 9, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives.

SECTION 11. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with California law.

SECTION 12. ENTIRE AGREEMENT.

This Agreement, including the exhibits, attachments and appendices, contains the entire agreement of the Parties with respect to the satisfaction of the requirements of the Parkland Dedication Ordinance for the Final Map for Phase 1 Tentative Map and supersedes all prior understandings or representations of the Parties, whether written or

oral. Any subsequent modification of this Agreement must be made in writing and signed by all Parties hereto.

SECTION 13. TIME OF ESSENCE.

Time is of the essence in the performance of this Agreement.

SECTION 14. FORCE MAJEURE.

- A. "Force Majeure Event" shall be defined as any matter or condition beyond the reasonable control of a Party, including without limitation war, public emergency or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, litigation brought by third parties against either the City or Owner or both, or any governmental order or law which causes an interruption in the construction of the Trail Improvements (the "Work" for purposes of this section) or prevents timely delivery of materials or supplies.
- B. Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section shall notify the other Party within ten (10) days of the affected Party's knowledge of the commencement of the Force Majeure Event; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.
- C. Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:
 - 1. Negligence or failure of Owner to perform its obligations under a contract for the Work (other than for a Force Majeure Event as

defined under the applicable contract) shall not constitute a Force Majeure Event.

2. The inability of Owner for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract for the prosecution of the Work for such reason or for Owner's default under such contract shall not constitute a Force Majeure Event.

SECTION 15. BOOKS AND RECORDS.

- A. Owner shall be solely responsible to implement internal controls and record keeping procedures in order to comply with this Agreement and all applicable laws. Owner shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the activities performed by Owner under this Agreement, including without limitation those relating to the construction of the Trail Improvements, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement or the date of the City's acceptance of the Trail Improvements, whichever is longer. Notwithstanding this previous sentence, Owner shall retain such records beyond three (3) years so long as any litigation, audit, dispute, or claim is pending.
- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Owner's address indicated for receipt of notices in this Agreement.

- C. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Owner's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Owner, Owner's representatives, or Owner's successor-in-interest.
- D. Owner's obligations under this Section shall be in addition to Owner's obligations specified in Exhibit D, Section II(B).

SECTION 16. MISCELLANEOUS PROVISIONS.

- A. Captions. Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. Incorporation of Recitals. The Recitals in this Agreement are hereby incorporated into the terms of this Agreement.
- C. Jurisdiction. In the event that suit shall be brought by any of the Parties, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- D. Waiver. Owner agrees that waiver by City of any breach or violation or any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition, or obligation.
- E. Plurality. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.

- F. Compliance with Laws. Owner, its employees, agents, representatives, contractors, and subcontractors shall comply with all local, state and federal laws in the performance of this Agreement.
- G. Nondiscrimination. Owner, its employees, agents, representatives, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other recognized or protected class in connection with or related to the performance of this Agreement. Owner shall expressly require compliance with the provisions of this Section 16(G) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.
- H. Owner has read each and every part of this Agreement, including without limitation, its exhibits, and Owner freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.
- I. Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either Party shall include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation.
- J. Severability. If any provisions or portions of this Agreement are held to be invalid by a court of competent jurisdiction, the remaining provisions or portions of this Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the Parties.
- K. This Agreement is entered into pursuant to and shall be governed by the Parkland Dedication Ordinance. If not otherwise defined in this

Agreement, capitalized terms shall have the meanings set forth in Chapter 19.38 of the San José Municipal Code.

SECTION 17. AGREEMENT'S ATTACHMENTS.


This Agreement includes the following attachments:

Exhibit A	Development Site Map
Exhibit B	Park Site Plan and Trail Improvements Plan
Exhibit C	Fees and Credits
Exhibit D	Park Site Requirements
Exhibit E	Trail Improvements Design and Construction Requirements
Exhibit F	Bond Forms

WITNESS THE EXECUTION HEREOF the day and year hereinafter written by City.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation



JOHNNY V. PHAN
Senior Deputy City Attorney

By: _____
TONI TABER, CMC
Acting City Clerk


Date: _____

OWNER

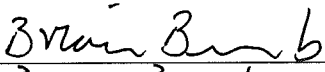
OWNER

KB HOME SOUTH BAY INC., a California Corporation

THE FLEA MARKET, INC., a California Corporation

By: 

Name: Jeffrey P. McMullen
Title: SVP Land Acquis. Coord

By: 

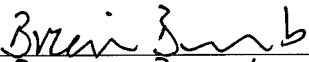
Name: Brian Bumb
Title: MANAGING Partner

OWNER

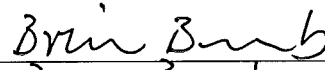
OWNER

BUMB & ASSOCIATES, a California General Partnership

BGT DEVELOPMENT, LLC, a California Limited Liability Company

By: 

Name: Brian Bumb
Title: MANAGING Partner

By: 

Name: Brian Bumb
Title: MANAGING Partner

- * All Owner's signatures must be accompanied by an attached notary acknowledgement.
- * Proof of authorization for Owner's signatures is required to be submitted concurrently with this Agreement.

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA) SS

On May 6, 2013 before me Justine M. Sampson, Notary Public
(Name, Title of officer – e.g. Jane Doe, Notary Public)

personally appeared Brian Bumb who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Justine M. Sampson
(Signature of Notary)

(Seal)



STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA) SS

On May 6, 2013 before me Justine M. Sampson, Notary Public
(Name, Title of officer – e.g. Jane Doe, Notary Public)

personally appeared Brian Bumb who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Justine M. Sampson
(Signature of Notary)

(Seal)



STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA) SS

On May 6, 2013 before me Justine M. Sampson, Notary Public
(Name, Title of officer – e.g. Jane Doe, Notary Public)

personally appeared Brian Burns who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Justine M. Sampson
(Signature of Notary)

(Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Contra Costa

On May 6, 2013 before me, Sara L. Robbins, Notary Public, personally appeared Jeffrey P. McMullen who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Sara L. Robbins



DEVELOPMENT SITE MAP



DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or Cityclerk@sanjoseca.gov for final document.

EXHIBIT B
Park Site

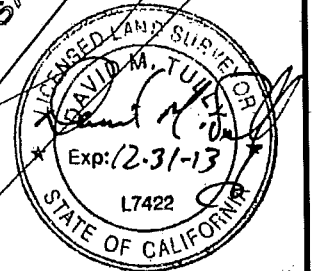
TRACT 8247
802-M-17

LANDS OF
THE FLEA
MARKET, et al.
DOC.NO.22063961

LANDS OF
THE FLEA
MARKET, et al.
DOC.NO.22063963

LANDS OF
THE FLEA
MARKET, et al.
DOC.NO.22063962

BERRYESSA ROAD



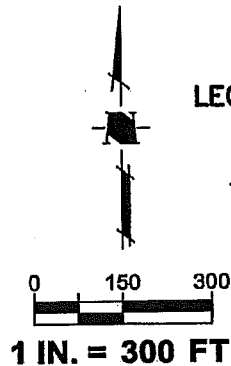
LINE	BEARING	DISTANCE
L1	S48°50'52"W	82.14'
L2	S48°54'25"W	281.88'
L3	S48°54'25"W	459.55'
L4	S49°45'55"E	131.19'
L5	S49°45'55"E	36.56'
L6	S58°03'30"E	34.43'
L7	N28°54'07"E	21.18'
L8	N62°51'40"E (R)	-
L9	N48°50'52"E	206.47'
L10	N41°09'08"W	341.29'

CURVE	RADIUS	DELTA	LENGTH
C1	280.00'	29°05'28"	142.17'
C2	99.00'	53°53'51"	93.13'
C3	62.00'	33°05'58"	35.82'
C4	109.00'	75°59'13"	144.56'
C5	20.00'	90°00'00"	31.42'

LEGEND

(R)
POC
TPOB

RADIAL BEARING
POINT OF COMMENCEMENT
TRUE POINT OF BEGINNING



SHEET 1 OF 1

Date: 05-01-2013
Scale: 1" = 300'
Designed: TV
Drawn: DT
Checked: TG
Proj. Engr: TV
090814PL13

HMH
1570 Oakland Road
San Jose, CA 95131
(408) 487-2200
HMHca.com

PLAT TO ACCOMPANY DESCRIPTION:
PARK AGREEMENT

SAN JOSE

CALIFORNIA

Ex B-1

TRACT
8247
802-M-17

EXHIBIT B
Trail Site

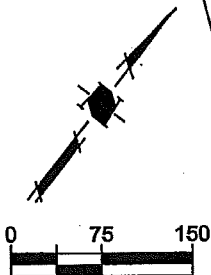
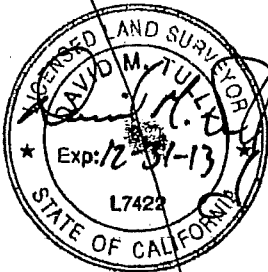
POC

PARK

LANDS OF THE FLEA
MARKET, et al.

DOC.NO.22063962

TPOB



1 IN. = 150 FT.

LEGEND

(R) RADIAL BEARING
POC POINT OF COMMENCEMENT
TPOB TRUE POINT OF BEGINNING

LINE	BEARING	DISTANCE
L1	S48°50'52"W	82.14'
L2	S48°54'25"W	281.88'
L3	S48°54'25"W	459.55'
L4	S49°45'55"E	131.19'
L5	S49°45'55"E	36.56'
L6	S58°03'30"E	34.43'
L7	S58°13'13"E	66.69'
L8	S60°03'37"E	248.16'
L9	S60°03'37"E	120.53'
L10	N44°44'30"E (R)	12.00'
L11	S60°03'37"E	151.66'
L12	S29°56'23"W	3.24'
L13	N18°36'12"E (R)	2.71'
L14	N69°07'22"W	-
L15	S29°56'23"W	1.00'
L16	N60°03'37"W	774.52'
L17	S64°30'38"W (R)C18	9.26'
L18	S28°54'07"W	21.18'

CURVE	RADIUS	DELTA	LENGTH
C1	280.00'	29°05'28"	142.17'
C2	99.00'	53°53'51"	93.13'
C3	62.00'	33°05'57"	35.82'
C4	65.03'	20°46'41"	23.58'
C5	65.00'	45°14'11"	51.32'
C6	65.01'	22°37'05"	25.66'
C7	65.00'	22°37'12"	25.66'
C8	65.00'	45°14'23"	51.32'
C9	65.00'	22°37'12"	25.66'
C10	38.40'	30°55'22"	20.72'
C11	240.00'	16°07'16"	67.53'
C12	228.00'	9°19'39"	37.12'
C13	4.00'	155°52'15"	10.88'
C14	24.71'	101°20'13"	43.70'
C15	22.00'	32°09'07"	12.35'
C16	40.00'	81°26'11"	56.85'
C17	102.50'	35°35'34"	63.67'
C18	109.00'	1°38'59"	3.14'

PUBLIC TRAIL

BERRYESSA ROAD

SHEET 1 OF 1

Date: 04-30-2013
Scale: 1" = 300'
Designed: TV
Drawn: DT
Checked: TG
Proj. Engr: TV
090814PL14

HMH
1570 Oakland Road
San Jose, CA 95131
(408) 487-2200
HMHca.com

PLAT TO ACCOMPANY DESCRIPTION:
PUBLIC TRAIL

SAN JOSE

CALIFORNIA

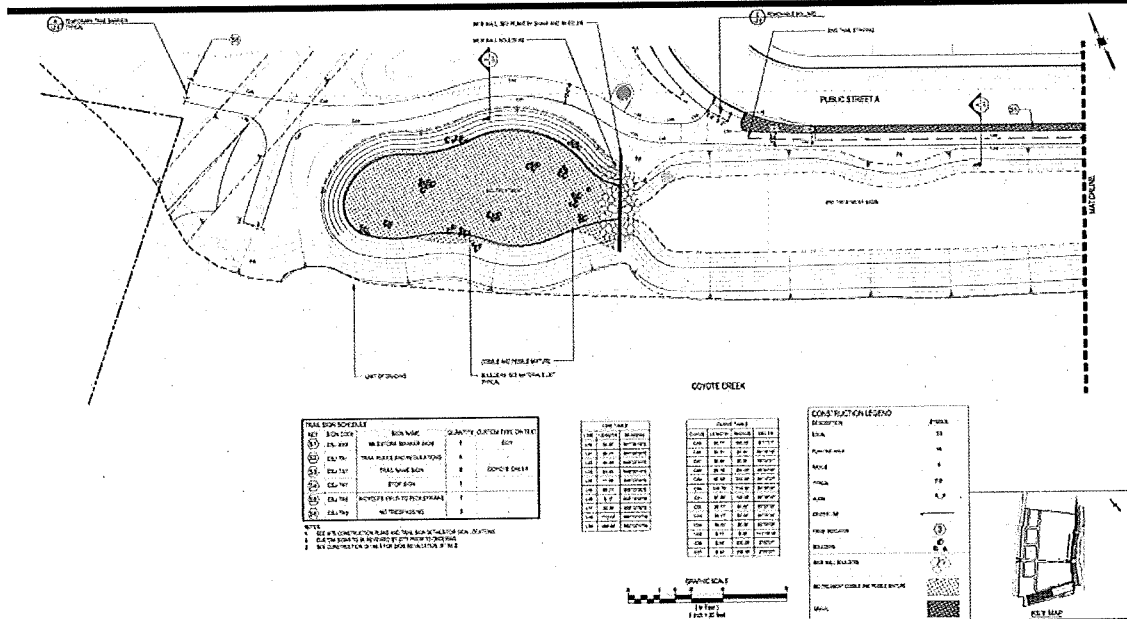
Ex B-2

T7656/071843L2
Agenda: 9/21/13
Ref: 5.3.2

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or Cityclerk@sanjoseca.gov for final document.

EXHIBIT B Trail Improvements Plan

Market Park
San Jose, CA

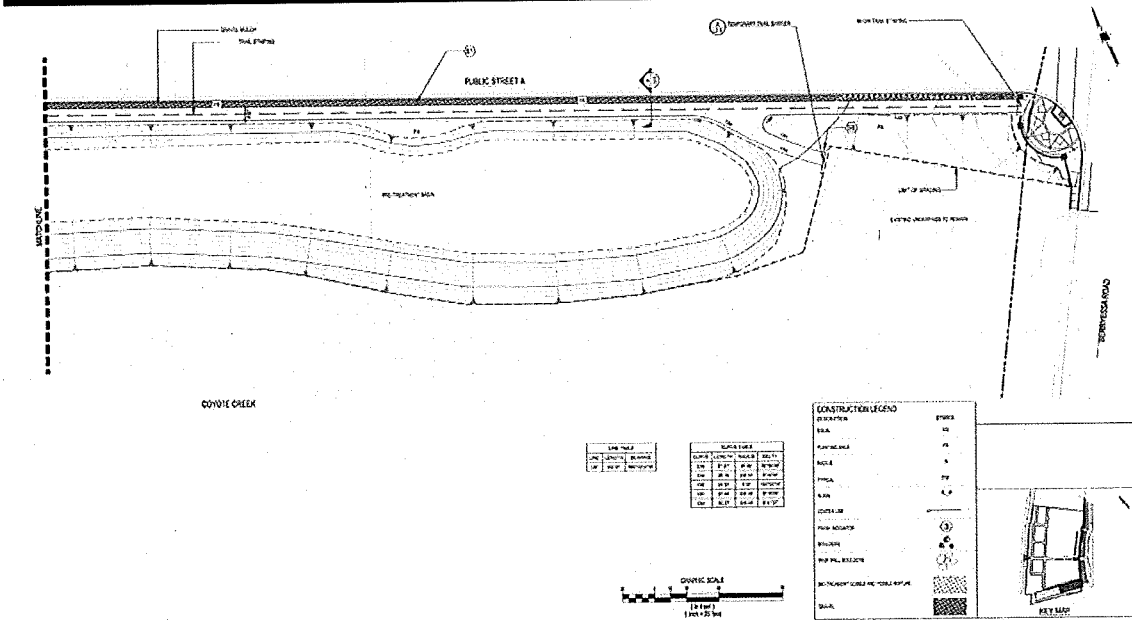


HMM

COYOTE CREEK TRAIL EXHIBIT

Drawn by: [Name]
Date: 05/02/13

Market Park
San Jose, CA



HMM

COYOTE CREEK TRAIL EXHIBIT

Drawn by: [Name]
Date: 05/02/13

Ex B-3

T-7656/971843_2

Agenda: 5/21/13

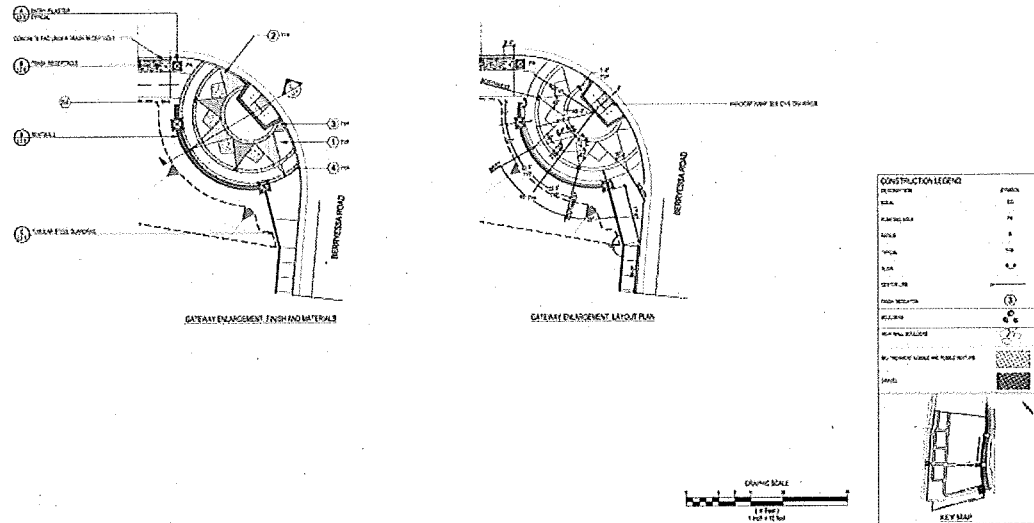
Item: 5.1

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or Cityclerk@sanjoseca.gov for final document.

RD:JVP
05/02/13

EXHIBIT B Trail Improvements Plan

Market Park
San Jose, CA



HMM
Hatch Mott MacDonald

COYOTE CREEK TRAIL EXHIBIT

Exhibit B-4 (continued)
March 2013

Ex B-4

T-7656/971843_2

Agenda: 5/21/13

Item: 5.1

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or Cityclerk@sanjoseca.gov for final document.

EXHIBIT "C"

TENTATIVE MAP NO. PT 08-019

Calculation of Fees and Credits

Parkland Dedication Requirements

Type of Dwelling	Number of Units	Persons Per Household	Total Population	Dedication requirement per Person (acres)	Total Parkland Dedication Required (acres)
Single Family Detached	78	3.31	258.18	0.003	0.775
Single Family Attached	44	3.31	145.64	0.003	0.437
Multi-Family 2-4	0	2.96	0.00	0.003	0.000
Multi-Family 5 or more units	120	2.34	280.80	0.003	0.842
				Total Dedication Req'd (acres)	2.054

Calculation of Parkland Dedication

Total Dedication Required (acres)	2.054
Total Public Parkland being dedicated (acres)	3.590

Turnkey Eligible Credits

	Improved Value*	MLS Cost per Square Foot	Acres
(Improved value/MLS cost per sf)/(43,560sf/acre)	\$256,256	\$25/sf	0.235
			Total Public Parkland Dedication: 3.590
			Turnkey Eligible Credits: 0.235
			Total Credits: 3.825

Net Parkland Dedication

Percentage of Dedication Requirement Met (Total Credits divided by Total Dedication Required)	186.25%
	Total Credits: 3.825
	Total Dedication Required: <u>2.054</u>
	Total Exceeding Requirement: 1.771
Total Public Parkland credit allowable for future maps (acres):	<u>1.771</u>

* Improved value includes estimated costs provided by Developer and City Review Fee as indicated in Section 4.A of the Parkland Agreement

EXHIBIT D

PARK SITE REQUIREMENTS

SECTION 1. PARK SITE.

- A. Owner1 shall provide each of the following to the Director of Office of Economic Development, subject to the approval of the Director of Office of Economic Development, prior to City's acceptance of the Park Site:
- a. A preliminary report for the Park Site by a reputable title company currently doing business for City's Real Estate Division. Owner1 shall coordinate with City's Real Estate Division and provide a preliminary title report at least ninety (90) days prior to execution of this Agreement and an updated title report at least ninety (90) days prior to the anticipated dedication of the Park Site.
 - b. A Grant Deed for the Park Site containing the legal description of the Park Site, as approved by City Surveyor, properly executed and acknowledged, subject only to the exceptions to title, if any, approved by City's Manager or the Manager's designee pursuant to which a fee simple estate in Park Site shall be conveyed to City. Title to the Park Site shall be vested in City free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Owner1, subject only to those exceptions affecting the Park Site approved by City's Manager or the Manager's designee, in writing or listed in this Exhibit ("Permitted Exceptions"). The Grant Deed, subject to approval of City, for the Park Site shall be delivered to the City's Real Estate Division at least ninety (90) days prior to the anticipated dedication of the Park Site.
 - c. Owner1 shall also cause to be provided to City, concurrently with the conveyance of the Park Site to City, a C.L.T.A. owner's form policy of title insurance issued by a reputable title company currently doing business with City, with City named as the insured, in the amount of \$3,909,510 insuring the title of City to the Park Site is subject to only the Permitted Exceptions.
 - d. Any and all reports related to the condition of the Park Site and the lands adjacent to the Park Site caused to be performed by the Owner1 or in the Owner1's possession or control. Owner1 shall also provide to City, at the Owner1's sole cost, a report, prepared or updated no earlier than twelve (12) months before the proposed acceptance of the Park Site by a qualified consultant analyzing the condition of the Park Site with respect to the presence of hazardous materials on or adjacent to the Park Site ("Hazardous Materials Report"). The definition of Hazardous Materials for purposes of this Agreement is set forth in Section 2 (A)(2) of this Exhibit. The scope of

Ex D-1

971843_2

the Hazardous Materials Report shall, at minimum, contain the elements set forth below in Section 3.

- e. In the event that the Hazardous Materials Report(s) disclose(s) the presence of Hazardous Materials on any of the Park Site in excess of generally accepted environmental screening limits for park land uses, (e.g. Environmental Screening Limits and California Human Health Screening Limits) and/or in violation of any hazardous materials/waste laws, the Director shall have the right to require Owner1, as a condition of acceptance, to remediate the condition, including without limitation, removal of the Hazardous Materials. The type of remediation required for the Park Site shall be at no cost to the City and be subject to the review and approval of the Director.
 - f. The Environmental Warranty specified in Section 2 of this Exhibit.
 - g. Documents evidencing the authority of the signatory(ies) to execute any agreement or other legal binding documents on behalf of Owner1.
- B. Upon the Director of Office of Economic Development's acceptance of the Park Site, Owner1 shall have no further obligations in connection with the Park Site except for the terms, conditions, or obligations of this Agreement that explicitly survives acceptance or termination.

SECTION 2. ENVIRONMENTAL WARRANTY/ CONDITION OF PROPERTY.

- A. By executing this Agreement, Owner1 warrants and agrees that, prior to the City's acceptance of the Park Site:
- 1. Neither the Park Site nor Owner1 will be in violation of any environmental law, and neither the Park Site nor Owner1 are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the Park Site.
 - 2. Neither Owner1 nor any other person with Owner1's permission to be upon the Park Site shall use, generate, manufacture, produce, or release, on, under, or about the Park Site, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "Hazardous Substances" or "Hazardous Materials" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the

Ex D-2

971843_2

same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.

3. Owner1 has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the Park Site, or the migration of any Hazardous Substance from or to any other property adjacent to, or in the vicinity of, the Park Site that will not be remediated by the date of City acceptance of the Park Site to City's sole satisfaction.
4. Owner1's prior and present use of the Park Site has not resulted in the release of any Hazardous Substance on, under, about, or adjacent to the Park Site that will not be remediated by the date of City acceptance of the Park Site to City's sole satisfaction.
5. Neither the Park Site to be dedicated nor any improvements to the Park Site to be dedicated shall be subject to any monitoring, reporting, or restrictions whatsoever by any governmental authority with jurisdiction over the Park Site, including but not limited to, the California Department of Toxic Substances Control and California Regional Water Quality Control Board.
6. Subject to Section 1(A)(b) of this Exhibit, neither the Park Site to be dedicated nor any improvements located on the Park Site to be dedicated shall be subject to any burden, easements, covenants or land use restrictions recorded against any part of the Park Site or improvements located on the Park Site except for the Permitted Exceptions.
7. The Park Site to be dedicated to City shall be in a clean, graded condition, without any structures or improvements on the Park Site.

B. Owner1 shall give prompt written notice to City of:

1. Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any Hazardous Substance on the Park Site or the migration thereof from or to any other property adjacent to, or in the vicinity of, the Park Site; and
2. Any claims made or threatened by any third party against Owner1, City or the Park Site relating to any loss or injury resulting from any Hazardous Substance; and
3. Owner1's discovery of any occurrence or condition on any property adjoining or in the vicinity of the Park Site that could cause the Park Site or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

Ex D-3

SECTION 3. HAZARDOUS MATERIALS REPORT.

A. Scope of Hazardous Materials Report.

The Hazardous Materials Report shall be in two phases, Phase I Environmental Site Assessment ("ESA") and, if necessary, Phase II ESA. The Phase I ESA shall be conducted utilizing standards of All Appropriate Inquiry and ASTM 1527-05 which, in general, provide the information identified below regarding the condition of the Park Site with respect to the presence or likely presence of any Hazardous Materials on, under, above, or about the Park Site, including the past, current, or possible release of any Hazardous Materials on, under, above, or about the Park Site.

1. The historical usage of the Park Site and adjacent parcels dating back to the Park Site's first developed use (including any agricultural use) or 1940, whichever is earlier.
2. Results of the site visits pertaining to the current condition of the Park Site, including without limitation, any observed storage, handling, or release of any Hazardous Materials on, under, above, or about the Park Site, or evidence indicating possible past or current storage, handling, or release of any Hazardous Materials on, under, above, or about the Park Site.
3. Results of the review of all reasonably available historical documents and records of regulatory agencies concerning the storage, handling, or release of any Hazardous Materials and/or contamination of any or all of the Park Site.
4. Based on the findings of items 1 - 3 above, additional investigation, including without limitation, soil and/or groundwater sampling and chemical analysis could be required by City. The sampling and analysis plan, which includes the number and depths of soil borings that might be required, shall be subject to the review and approval of City.
5. A written report shall be prepared by a licensed environmental professional presenting results of the Phase I ESA. The report shall include any chemical analysis which may have been completed during the survey along with chain of custody documentation, soil boring logs if required and recommendations for any further investigation and remediation/source control necessary on the Park Site.

B. Phase II ESA (if necessary).

A definitive scope of services for the Phase II ESA cannot be determined until completion of the Phase I ESA, as the extent and type of further investigation will be determined by the Phase I ESA findings. The following tasks serve only as preliminary guidelines for potential Phase II investigation and are subject to revision upon City's

review and approval of the Phase I ESA (Hazardous Materials Report). It is possible that no Phase II investigation will be necessary.

1. Soil and Groundwater Sampling and Analysis.

Depending on the results of the Phase I ESA, it may be necessary to sample and analyze the soil and/or groundwater on-site. If such analysis is necessary, a sampling and analysis plan shall be prepared and approved by City that shall define a sufficient number of samples to be collected and analyzed to allow for an adequate characterization of the environmental condition of the Site. Soil and/or groundwater samples shall be analyzed for petroleum hydrocarbons, selected metals, and volatile organic compounds, or any other potential contaminant of concern as identified in the Phase I ESA.

Soil and/or groundwater samples shall be collected utilizing typical professional protocols and submitted to an EPA certified laboratory for analysis.

2. Report Preparation.

A written report shall be prepared presenting the results of the Phase II investigation. The report shall include results from any chemical analysis completed during the investigation, along with chain-of-custody documentation, boring logs of sampling locations or from any monitoring wells completed, and recommendations for any further investigation and remediation/source control necessary on the site.

3. Report on any Remediation Work.

A written report shall be prepared presenting the results of any remediation work resulting from a Phase II investigation. The report shall include results from any chemical analysis completed during the survey, along with chain-of-custody documentation, boring logs of sampling locations or from any monitoring wells completed, and that any recommendations for any further investigation and remediation/source control necessary on the Park Site have been completed.

EXHIBIT E

TRAIL IMPROVEMENTS DESIGN AND CONSTRUCTION REQUIREMENTS

SECTION 1. DESIGN AND CONSTRUCTION REQUIREMENTS.

A. Plans And Specifications.

The design for the Trail Improvements must be consistent with the conceptual design for the Trail Improvements as depicted in **Exhibit B.** Owner2 shall design and construct the Trail Improvements in accordance with the following:

1. City's Standard Specifications and Standard Details, dated July 1992 ("City's Specifications"), as may be amended from time to time, and on file with City's Department of Public Works, Architectural Division. Section 1 and the Technical Provisions of City's Standard Specifications (Section 10 through and including Section 1501) shall be applicable to this Agreement. References in the Standard Specifications to "Developer" shall be deemed to mean "Owner2."
2. City's Turnkey Park Standards for Park Design & Construction, dated 2001 ("Turnkey Standards"), as may be amended from time to time, and on file with City's Department of Public Works, Architectural Division. In the event that Owner2 does not submit the ninety percent (90%) Project Specifications (as specified in the Turnkey Standards) for City's review and approval within eighteen (18) months of the Effective Date of this Agreement and the Turnkey Standards are then revised, Owner2 shall design and construct the Trail Improvements in accordance with the revised Turnkey Standards.

B. Application Of Plans And Specifications.

1. City's Specifications, Turnkey Standards and the Project Specifications shall be collectively referred to as the "Plans." The Trail Improvements shall be constructed in accordance with the Plans.
2. In the event of a conflict between the Turnkey Standards and the City's Specifications, the Turnkey Standards shall prevail.
3. The provisions of this Agreement supersede anything to the contrary in either the City's Specifications or the Turnkey Standards.

C. Project Specification Approval Process.

1. The Project Specifications shall be submitted in a timely manner in order to insure that the Owner2 completes the Trail Improvements on or before the completion date specified in this Agreement. Owner2 shall not construct any

Trail Improvements unless and until the City's Director of Public Works ("Director of PW") has approved the Project Specifications in writing. The approval process for the Project Specifications is more particularly set forth in the Turnkey Standards.

2. City's approval of the Plans shall not release Owner2 of the responsibility for the correction of mistakes, errors, or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved. If, during the course of construction of the Trail Improvements, the Director of PW determines in the Director of PW's reasonable discretion that the public safety requires modification of, or the departure from, the Plans, the Director of PW shall have the authority to require such modification or departure and to specify the manner in which the same may be made. The Parties acknowledge that the Plans, once approved by the Director of PW, shall be final and that, except as expressly provided in this subsection, no revisions to the Plans shall be permitted for any reason whatsoever.

SECTION 2. PARTICULAR CONSTRUCTION REQUIREMENTS.

A. OWNER2 Selection.

Owner2 may hire and contract with one or more contractor or subcontractor, licensed to perform such work in the State of California.

B. Prevailing Wage Requirement.

1. General Requirement: For all construction work on the Trail Improvements, Owner2 agrees to comply with the prevailing wage requirements set forth in Sections 7-1.01A(2) through 7-1.01A(3) of the City of San Jose, Department of Public Works, Standard Specifications, dated July 1992 ("Prevailing Wage Requirement"), as may be amended from time to time. The Prevailing Wage Requirement is incorporated into this Agreement by reference as though set forth herein in their entirety. Owner2 acknowledges that it has reviewed the Prevailing Wage Requirement and is familiar with its requirements.
2. Contractors and Subcontractors: Owner2 shall expressly require compliance with the Prevailing Wage Requirement in all agreements it enters into with contractors and subcontractors for construction work on the Trail Improvements. Owner2 acknowledges and agrees that it is responsible for compliance by its contractors and subcontractors of the Prevailing Wage Requirement.
3. Reporting Obligations: Notwithstanding anything to the contrary contained herein, Owner2 is not obligated to submit to City copies of payroll records, or any other records required to be maintained pursuant to the Prevailing Wage Requirement, until City requests such records. Owner2 shall provide to City, at

no cost to City, a copy of any and all such records within ten (10) working days of City's Office of Equality Assurance request for such records. In responding to a request by the Office of Equality Assurance, Owner2 agrees that it is responsible for submitting the records of any and all of its contractors and subcontractors.

4. Indemnity: Owner2 shall indemnify the City for any claims, costs or expenses which City incurs as a result of Owner2's failure to pay, or cause to be paid, prevailing wages.

C. Remedies For Owner2's Breach Of Prevailing Wage Requirements.

1. General: Owner2 acknowledges City has determined that the Prevailing Wage Requirement promotes each of the following (collectively "Goals"):
 - a. It protects City job opportunities and stimulates City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
 - b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to City by fostering high turnover and instability in the workplace.
 - c. Pay workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
 - d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.
2. Remedies: City and Owner2 recognize that Owner2's breach of the Prevailing Wage Requirement set forth above will cause damage to the City by undermining City's goals in assuring timely payment of prevailing wages, and will cause City additional expenses in obtaining compliance and conducting audits, and that such damage would not be remedied by Owner2's payment of restitution to the worker paid less than the prevailing wage. Owner2 and City agree that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. City and Owner2 further recognize the delays, expense and difficulty involved in proving City's actual losses in a legal proceeding, and mutually agree that making a precise determination of the amount of City's damages as a result of Owner2's breach of the Wage Provision would be impracticable and/or extremely difficult. Accordingly, City and Owner2 agree that:

- a. For each day after ten (10) working days that Owner2 fails to completely respond to a request by City to provide records as required under Section 2(b), of **Exhibit E** of this Agreement, Owner2 shall pay to City as liquidated damages the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00); and
 - b. For each instance where City has determined that the Prevailing Wage Requirements were not met, Owner2 shall pay to City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wages which should have been paid.
3. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Prevailing Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Owner's address indicated for receipt of notices in this Agreement.
 4. Remedies Cumulative: The remedies set forth in this provision of the Agreement are cumulative and in addition to any other remedies set forth in the Prevailing Wage Requirements or otherwise permitted by law.

Owner1 and Owner 2 Initials: MBB

City Initial: _____

D. Conduct Of Work.

1. Appearance. Owner2 shall maintain a neat and clean appearance to the work at the Trail Site. When practicable, broken concrete and debris developed during clearing and grubbing shall be disposed of concurrently with its removal. If stockpiling of disposable material is necessary, the material shall be retained in an area not readily visible to the public in a manner meeting the reasonable satisfaction of the Director of PW.
2. Condition. Owner2 shall maintain the Trail Site in a neat, clean, and good condition prior to City's acceptance of the Trail Improvements. Owner2 shall not dispose or cause the disposal of any Hazardous Substances on any of the Trail Site. Additionally, Owner2 shall take reasonable precautions to prevent the disposal of Hazardous Substances by third parties on any of the Site. The term "Hazardous Substances" is defined in Section 3 (A)(2) of this Exhibit.
3. Emergencies. In an emergency affecting the safety of persons or property, Owner2 shall act reasonably to prevent threatened damage, injury, or loss. Owner2 shall immediately notify the City by telephone at the telephone number as directed by City's Director of PW and in writing of such actions.

E. Access For Inspection.

1. Access. The Director of PW and the Director of PW's designated representatives, including without limitation, staff from other City departments, shall at all times during the progress of work on the Trail Improvements have free access to such improvements for inspection purposes. If the Director of PW determines that all or any portion of the work done on the Trail Improvements is not in compliance with the Plans, the Director of PW shall notify Owner2 of the same and Owner2 shall promptly cure such defect to the Director of PW's reasonable satisfaction. Such notifications shall be made to the Owner2 and his on-site representatives to not unduly interfere with ongoing construction work.
2. Representatives.
 - a. Prior to commencement of work on the Trail Improvements, Owner2 shall designate in writing an authorized representative who shall have the authority to represent and act for Owner2. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Director of PW shall be made for any emergency work which may be required. In addition, Owner2 shall provide Director of PW with the names and telephone numbers of at least two (2) individuals in charge of or responsible for the work who can be reached personally in case of emergency twenty-four (24) hours a day, seven (7) days a week.
 - b. The Director of PW shall also designate one or more authorized representative who shall have the authority to represent the Director of PW. Owner2's authorized representative shall be present at the site of the work at such reasonable times as designated by the Director of PW. Prior to commencement of the work, the Parties shall mutually agree to an inspection schedule, which schedule may be adjusted from time to time by mutual agreement.
 - c. Whenever the Owner2 or its authorized representative is not present on any particular part of the work where it becomes necessary to give direction for safety reasons, the Director of PW shall have the right to give such orders which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given. Any order given by the Director of PW will on request of the Owner2 be given or confirmed by the Director of PW in writing.
 - d. City's rights under this Agreement shall not make the Owner2 an agent of the City, and the liability of the Owner2 for all damages to persons or to public or private property arising from Owner2's execution of the work, shall not be lessened because of the exercise by City of its rights.

F. Acceptance of Trail Improvements.

The Trail Improvements shall be completed in accordance with the provisions of this Agreement to the satisfaction of the Director of PW.

1. City agrees to inspect and prepare a punchlist for the Trail Improvements within ten (10) business days of notification by Owner2 that the Owner2 considers the construction of the Trail Improvements to be complete. City further agrees to perform its final inspection within ten (10) business days of notification by Owner2 that all punchlist work has been completed.
2. City will process acceptance documentation (Notice of Acceptance) within ten (10) business days of the date of City's final inspection or the date upon which the Owner2 returns to City the appropriate signed acceptance documentation, whichever is later, provided that:
 - a. City finds that all punchlist work has been satisfactorily completed; and
 - b. Owner2 has performed and satisfied any and all terms, conditions, and obligations required under this Agreement prior to acceptance of the Trail Improvements; and
 - c. Owner2 has provided the Director of PW with three (3) sets of the Plans ("record plans") corresponding copies of any and all warranties, and the like (such warranties shall be in the name of the City), and corresponding copies of any and all operating manuals for equipment installed as part of the Trail Improvements.
3. The Parties acknowledge that City's restrictions on the installation of landscaping because of future drought conditions may delay Owner2's installation of the landscaping contemplated by this Agreement. If, due to drought restrictions, Owner2 is unable to install the landscaping in time to be inspected by the Director for the purposes of accepting the completed Trail Improvements, Owner2 shall post a bond or other form of security as set forth in Section 5 (A)(4) of this Agreement.
4. At the discretion of the Director of PW, City may accept a designated portion of the Trail Improvements. Acceptance of a designated portion will be as provided by Section 7-I.166 of the City's Specifications.

G. TRAIL SITE.

- A. Owner1 shall provide each of the following to the Director of Office of Economic Development, subject to the approval of the Director of Office of Economic Development, prior to City's acceptance of the Trail Site:
1. A preliminary report for the Trail Site by a reputable title company currently doing business for City's Real Estate Division. Owner1 shall coordinate with City's Real Estate Division and provide a preliminary title report at least ninety (90) days prior to execution of this Agreement and an updated title report at least ninety (90) days prior to the anticipated dedication of the Trail Site.
 2. A Grant Deed for the Trail Site containing the legal description of the Trail Site, as approved by City Surveyor, properly executed and acknowledged, subject only to the exceptions to title, if any, approved by City's Manager or the Manager's designee pursuant to which a fee simple estate in Trail Site shall be conveyed to City. Title to the Trail Site shall be vested in City free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Owner1, subject only to those exceptions affecting the Trail Site approved by City's Manager or the Manager's designee, in writing or listed in this Exhibit ("Permitted Exceptions"). The Grant Deed, subject to approval of City, for the Trail Site shall be delivered to the City's Real Estate Division at least ninety (90) days prior to the anticipated dedication of the Trail Improvements.
 3. Owner1 shall also cause to be provided to City, concurrently with the conveyance of the Trail Site to City, a C.L.T.A. owner's form policy of title insurance issued by a reputable title company currently doing business with City, with City named as the insured, in the amount of \$366,993 insuring the title of City to the Trail Site is subject to only the Permitted Exceptions.
 4. Any and all reports related to the condition of the Trail Site and the lands adjacent to the Trail Site caused to be performed by the Owner1 or in the Owner1's possession or control. Owner1 shall also provide to City, at the Owner1's sole cost, a report, prepared or updated no earlier than twelve (12) months before the proposed acceptance of the Trail Improvements by a qualified consultant analyzing the condition of the Trail Site with respect to the presence of hazardous materials on or adjacent to the Trail Site ("Hazardous Materials Report"). The definition of Hazardous Materials for purposes of this Agreement is set forth in Section 4 (A)(2) of this Exhibit. The scope of the Hazardous Materials Report shall, at minimum, contain the elements set forth below in Section 4.
 5. In the event that the Hazardous Materials Report(s) disclose(s) the presence of Hazardous Materials on any of the Trail Site in excess of generally accepted environmental screening limits for park land uses, (e.g. Environmental Screening Limits and California Human Health Screening Limits) and/or in violation of any hazardous materials/waste laws, the Director shall have the right to require Owner1, as a condition of acceptance, to remediate the condition, including without limitation, removal of the Hazardous Materials. The type of remediation required for the Trail Site shall be at no cost to the City and be subject to the review and approval of the Director.
 6. The Environmental Warranty specified in Section 3 of this Exhibit.

7. Documents evidencing the authority of the signatory(ies) to execute any agreement or other legal binding documents on behalf of Owner1.
- B. Upon the Director of Office of Economic Development's acceptance of the Trail Site and Trail Improvements, Owner shall have no further obligations in connection with the Trail Site except for the terms, conditions, or obligations of this Agreement that explicitly survives acceptance or termination.

H. Compliance With Laws/Permits.

1. Owner2 shall keep fully informed of all existing and future local, state, and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work on the Trail Improvements, or the materials used in the Trail Improvements, or which in any way affect the conduct of the work on the Trail Improvements, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. In the performance of any work pursuant to this Agreement, Owner2 shall at all times observe and comply with, and shall cause all Owner2's employees, agents, representatives, contractors and subcontractors to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order, or decree, Owner2 shall promptly report the same to the Director.
2. Owner2 shall, at its sole cost and expense, obtain all governmental reviews and approvals, licenses, and permits which are, or may be, required and necessary to construct and complete the Trail Improvements in accordance with the provisions of this Agreement, including, but not limited to, site development reviews, development permits and environmental review. Owner2 shall comply with all conditions, restrictions or contingencies imposed upon, or attached to, such governmental approvals, licenses, and permits. If Owner2 for any reason fails to comply with any of City's requirements, or any other legal requirement concerning Owner2's construction of the Trail Improvements, then City shall have the right to require Owner2 to alter, repair, or replace any improvements or perform any other action to the satisfaction of the Director as reasonably required to correct any non-compliance of the Trail Improvements with legal requirements or this Agreement and at no cost to City. Owner2's failure to effect the cure as required by the Director shall constitute an Event of Default in accordance with Section 6 of this Agreement.

SECTION 3. ENVIRONMENTAL WARRANTY.

- A. By executing this Agreement, Owner1 warrants and agrees that, prior to the City's acceptance of the Trail Site:

1. Neither the Trail Site nor Owner1 will be in violation of any environmental law, and neither the Trail Site nor Owner1 are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the Trail Site.
2. Neither Owner nor any other person with Owner's permission to be upon the Trail Site shall use, generate, manufacture, produce, or release, on, under, or about the Trail Site, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "Hazardous Substances" or "Hazardous Materials" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.
3. Owner has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the Trail Site or the property on which the Trail Improvements are to be constructed, or the migration of any Hazardous Substance from or to any other property adjacent to, or in the vicinity of, the Trail Site that will not be remediated by the date of acceptance of the Trail Site to City's sole satisfaction.
4. Owner1's prior and present use of the Trail Site has not resulted in the release of any Hazardous Substance on, under, about, or adjacent to the Trail Site that will not be remediated by the date of acceptance of the Trail Site to City's sole satisfaction.
5. Neither the Trail Site nor Trail Improvements located on the Trail Site shall be subject to any monitoring, reporting, or restrictions whatsoever by any governmental authority with jurisdiction over the Trail Site, including but not limited to, the California Department of Toxic Substances Control and California Regional Water Quality Control Board.
6. Subject to Section 2.G.A.2 of this Exhibit, neither the Trail Site nor Trail Improvements located on the Trail Site shall be subject to any burden, easements, covenants or land use restrictions recorded against any part of the Trail Improvements or Trail Site subject to the Permitted Exceptions.

B. Owner shall give prompt written notice to City of:

1. Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any Hazardous Substance on the Trail Site or the migration thereof from or to any other property adjacent to, or in the vicinity of, the Trail Site; and
2. Any claims made or threatened by any third party against Owner, City or the Trail Site relating to any loss or injury resulting from any Hazardous Substance; and
3. Owner's discovery of any occurrence or condition on any property adjoining or in the vicinity of the Trail Site that could cause the Trail Site or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

SECTION 4. HAZARDOUS MATERIALS REPORT.

A. Scope of Hazardous Materials Report.

The Hazardous Materials Report shall be in two phases, Phase I Environmental Site Assessment ("ESA") and, if necessary, Phase II ESA. The Phase I ESA shall be conducted utilizing standards of All Appropriate Inquiry and ASTM 1527-05 which, in general, provide the information identified below regarding the condition of the Trail Site with respect to the presence or likely presence of any Hazardous Materials on, under, above, or about the Trail Site, including the past, current, or possible release of any Hazardous Materials on, under, above, or about the Trail Site.

1. The historical usage of the Trail Site and adjacent parcels dating back to the Trail Site's first developed use (including any agricultural use) or 1940, whichever is earlier.
2. Results of the site visits pertaining to the current condition of the Trail Site, including without limitation, any observed storage, handling, or release of any Hazardous Materials on, under, above, or about the Trail Site, or evidence indicating possible past or current storage, handling, or release of any Hazardous Materials on, under, above, or about the Trail Site.
3. Results of the review of all reasonably available historical documents and records of regulatory agencies concerning the storage, handling, or release of any Hazardous Materials and/or contamination of any or all of the Trail Site.
4. Based on the findings of items 1 - 3 above, additional investigation, including without limitation, soil and/or groundwater sampling and chemical analysis could be required by City. The sampling and analysis plan, which includes the number and depths of soil borings that might be required, shall be subject to the review and approval of City.

5. A written report shall be prepared by a licensed environmental professional presenting results of the Phase I ESA. The report shall include any chemical analysis which may have been completed during the survey along with chain of custody documentation, soil boring logs if required and recommendations for any further investigation and remediation/source control necessary on the Trail Site.

B. Phase II ESA (if necessary).

A definitive scope of services for the Phase II ESA cannot be determined until completion of the Phase I ESA, as the extent and type of further investigation will be determined by the Phase I ESA findings. The following tasks serve only as preliminary guidelines for potential Phase II investigation and are subject to revision upon City's review and approval of the Phase I ESA (Hazardous Materials Report). It is possible that no Phase II investigation will be necessary.

1. Soil and Groundwater Sampling and Analysis.

Depending on the results of the Phase I ESA, it may be necessary to sample and analyze the soil and/or groundwater on-site. If such analysis is necessary, a sampling and analysis plan shall be prepared and approved by City that shall define a sufficient number of samples to be collected and analyzed to allow for an adequate characterization of the environmental condition of the Site. Soil and/or groundwater samples shall be analyzed for petroleum hydrocarbons, selected metals, and volatile organic compounds, or any other potential contaminant of concern as identified in the Phase I ESA.

Soil and/or groundwater samples shall be collected utilizing typical professional protocols and submitted to an EPA certified laboratory for analysis.

2. Report Preparation.

A written report shall be prepared presenting the results of the Phase II investigation. The report shall include results from any chemical analysis completed during the investigation, along with chain-of-custody documentation, boring logs of sampling locations or from any monitoring wells completed, and recommendations for any further investigation and remediation/source control necessary on the site.

3. Report on any Remediation Work.

A written report shall be prepared presenting the results of any remediation work resulting from a Phase II investigation. The report shall include results from any chemical analysis completed during the survey, along with chain-of-custody documentation, boring logs of sampling locations or from any monitoring wells completed, and that any recommendations for any further investigation and remediation/source control necessary on the Trail Site have been completed.

SECTION 5. INSURANCE REQUIREMENTS.

Owner2 and/or its contractors and consultants shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Development hereunder by the Owner2, its agents, representative employees, contractors, or subcontractors.

A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall also be included for all owned, non-owned and hired autos; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all professional services carried by Owner2's design professional; and
5. Builder's Risk insurance providing coverage for "all risks" of loss; and
6. Pollution Liability insurance, including coverage for all operations, completed operations and professional services (without exclusion for asbestos or lead) to be carried by Owner2's subcontractors.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager in writing.

B. Minimum Limits of Insurance.

Owner2 shall maintain limits no less than:

1. Commercial General Liability: Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of One Million Dollars (\$1,000,000) per accident; coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officers, employees, agents, and contractors; and
4. Professional Liability Errors and Omissions: One Million Dollars (\$1,000,000) per claim/One Million Dollars (\$1,000,000) aggregate limit to be carried by Contractor's design professionals only; and
5. Builders' Risk: Completed value of Project; and
6. Pollution Liability: Two Million Dollars (\$2,000,000) per occurrence/Two Million Dollars (\$2,000,000) aggregate limit to be carried by Owner2's subcontractors.

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager in writing. At the option of City, either, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officials, employees, agents, and contractors, or Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by City.

D. Provisions Of Policies.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Regarding Commercial General Liability, Automobile Liability and Pollution Liability Coverages.
 - a. City, its officials, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of, the Owner2; products and completed operations of the Owner2; premises owned, leased or used by the Owner2; or automobiles owned, leased, hired or borrowed by Owner2. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors; and
 - b. The Owner2's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officials, employees, agents and contractors shall be excess of the Owner2's insurance and shall not contribute with it; and

- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and the City, its officials, employees, agents and contractors; and
 - d. Coverage shall state that Owner2's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and
 - e. Coverage shall contain a waiver of subrogation in favor of City, its officials, employees, agents and contractors.
- 2. Workers' Compensation and Employers Liability Coverages shall contain a waiver of subrogation in favor of City, its officials, employees, agents, and contractors.
 - 3. Builders' Risk policies shall contain the following provisions:
 - a. City shall be named as loss payee.
 - b. Coverage shall contain a waiver of subrogation in favor of City, its officials, employees, agents and contractors.
 - 4. All Coverages.

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City's Risk Manager, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Duration.

- 1. Commercial General Liability (including, without limitation, products and completed operations coverage), Professional Liability and Pollution Liability coverages shall be maintained continuously for a minimum of five (5) years after completion of the work under this Agreement.
- 2. If any of such coverages are written on a claims-made basis, the following requirements apply:
 - a. The policy retroactive date must precede the date the work commenced under this Agreement.
 - b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, Owner2 must purchase an extended

reporting period equal to or greater than five (5) years after completion of the work under this Agreement.

F. Acceptability of Insurers.

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

G. Verification of Coverages.

Owner2 shall furnish City (in the manner provided below) with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgt@sanjoseca.gov, or mailed to the following postal address or any subsequent email or postal address as may be directed in writing by the City's Risk Manager:

The City of San Jose – Finance
Risk Management
200 East Santa Clara Street, 13th Floor Tower
San Jose, CA 95113-1905

H. Owner2 or its contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT F

BOND FORMS

Bond No. _____

Premium _____

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and *insert name of Owner2 or Contractor, type of entity, and state of incorporation if applicable* as principal ("Principal") have entered into an agreement entitled *insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract;

NOW, THEREFORE, we the Principal and *insert full name of Surety*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of *insert bond amount*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and *insert name of Owner2 or Contractor, type of entity, and state of incorporation if applicable*, as principal ("Principal") have entered into an agreement entitled *insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and *insert full name of Surety*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of *insert bond amount*, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be

Ex F-3

971843_2

Agenda: 5/21/13

Item: 5.1

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or Cityclerk@sanjoseca.gov for final document.

performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:

SURETY:

(Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____

(Signature)

BY: _____

(Signature)

Print name and title)

Principal address and telephone:

Print name and title)

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California ("City") and *[insert name of Owner2/Contractor, type of entity, and state of incorporation if applicable]* as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of *[insert bond amount – 25% of Faithful Performance Bond]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder

Ex F-5

971843_2

or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name) (Seal)

(Surety name) (Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Attorney if executed by Attorney-in-Fact

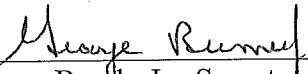
**MINUTES OF ACTION
OF THE MEMBERS
OF THE
BGT DEVELOPMENT, LLC.**

The following actions of the members of BGT Development, LLC. were made and approved without a meeting on Friday, May 3, 2013.

The Chairperson explained that the Company was in negotiations with the City of San Jose and KB Homes concerning dedication of land to be used as parks to be built on the Flea Market. After discussion, the following resolution was adopted:

RESOLVED, Brian Bumb, as Managing Member, is authorized on behalf of the Company to conduct all negotiations, enter into contracts, sign all documents, and perform all acts necessary to necessary to complete a transaction or series of transactions related to the dedication of real property for the purpose of the building park(s) on the Flea Market.

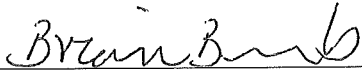
FURTHER RESOLVED, that Secretary, Vice President, and General Counsel of the Company are authorized to perform all acts and provide such assistance to the Managing Member in carrying out this Resolution as may be required.



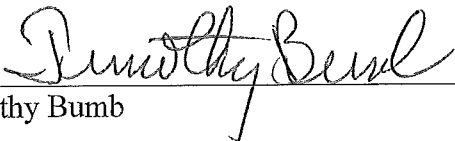
George Bumb, Jr., Secretary

**CONSENT TO MEETING AND APPROVAL OF
MINUTES OF ACTION OF MEMBERS
OF BGT DEVELOPMENT, LLC.**

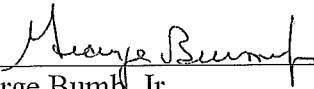
We, the undersigned Members consent to the Actions of Members of BGT Development, LLC. on Friday, May 3, 2013, and approve the minutes thereof.



Brian Bumb

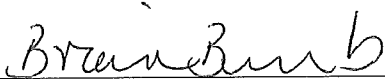


Timothy Bumb



George Bumb, Jr.

Bumb & Associates, a General Partnership



Brian Bumb, Managing Partner

**MINUTES OF ACTION
OF THE BOARD OF DIRECTORS
OF THE FLEA MARKET, INC.**

A meeting of the Board of Directors of the Flea Market, Inc. was held on Friday, May 3, 2013. Present at the meeting were the following Directors, being all the Directors of the Corporation: Brian Bumb, Timothy Bumb, and George Bumb, Jr. Also present was Ronald Werner, General Counsel for the Corporation.

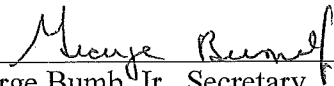
Brian Bumb acted as Chairperson and George Bumb Jr. acted as Secretary.

The Chairperson explained that the Corporation was in negotiations with the City of San Jose and KB Homes concerning dedication of land to be used as parks to be built on the Flea Market. After discussion, the following resolution was adopted:

RESOLVED, the President of Corporation is authorized on behalf of the Corporation to conduct all negotiations, enter into contracts, sign all documents, and perform all acts necessary to necessary to complete a transaction or series of transactions related to the dedication of real property for the purpose of the building park(s) on the Flea Market.

FURTHER RESOLVED, that Secretary, Vice President, and General Counsel of the Corporation are authorized to perform all acts and provide such assistance to the President in carrying out this Resolution as may be required.

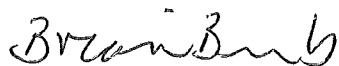
Upon motion duly made and seconded, the meeting was adjourned.



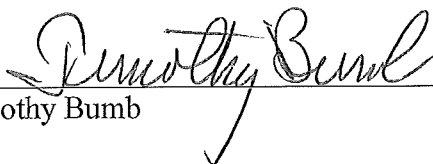
George Bumb, Jr., Secretary

**CONSENT TO MEETING AND APPROVAL OF
MINUTES OF THE BOARD OF DIRECTORS
OF THE FLEA MARKET, INC.**

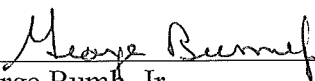
We, the undersigned Directors, consent to the holding of the meeting of the Board of Directors of the Flea Market, Inc. on Friday, May 3, 2013, and approve the minutes thereof.



Brian Bumb



Timothy Bumb



George Bumb, Jr.

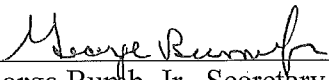
**CERTIFICATE OF SECRETARY
Of
THE FLEA MARKET, INC.**

I, George Bumb, Jr., state that I am the duly elected Secretary of the Corporation, and that on May 5, 2013, the following Resolution of the Corporation was adopted by the Corporation:

RESOLVED, the President of Corporation is authorized on behalf of the Corporation to conduct all negotiations, enter into contracts, sign all documents, and perform all acts necessary to necessary to complete a transaction or series of transactions related to the dedication of real property for the purpose of the building park(s) on the Flea Market.

FURTHER RESOLVED, that Secretary, Vice President, and General Counsel of the Corporation are authorized to perform all acts and provide such assistance to the President in carrying out this Resolution as may be required.

May 6, 2013



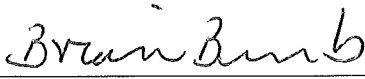
George Bumb, Jr., Secretary

**PARTNERSHIP AUTHORIZATION
TO SIGN
PARKLAND AGREEMENT
FOR FINAL TRACT MAP NO. 10160**


WHEREAS Section 3.03 provides for the Partners to elect a Managing Partner to conduct the business of the partnership,

AND WHEREAS, Brian Bumb has been duly elected by a majority interest of the Partnership,

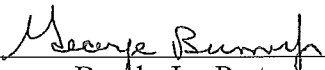
The Partnership authorizes Brian Bumb, as its Managing General Partner, to perform all acts and execute all documents required to be signed on behalf of the Partnership to provide for the dedication of park(s) on real property owned by the Partnership at the San Jose Flea Market.



Brian Bumb, Partner



Timothy Bumb, Partner



George Bumb, Jr., Partner




Anne-Marie Bumb, Partner

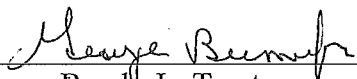


Leon Schaper, Partner

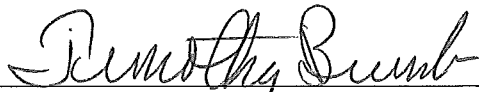
The Lorraine Bumb 2001 Irrevocable Trust



Brian Bumb, Trustee



George Bumb, Jr. Trustee



Timothy Bumb, Trustee



CERTIFICATE OF SECRETARY

I, Tony Richelieu, do hereby certify that I am the duly elected, qualified and acting Secretary of KB HOME South Bay Inc., a California corporation (this "Corporation").

I further certify that the resolutions attached hereto as Exhibit "A" are a true and complete representation of such resolutions duly adopted by an unanimous written consent of the Board of Directors of this Corporation as of July 26, 2011 and that such resolutions have not been amended, modified or rescinded and remain in full force and effect as of the date hereof.

WITNESS MY HAND this 26th day of July, 2011.

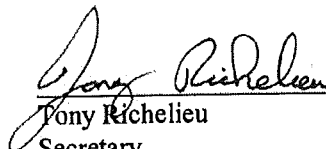

Tony Richelieu
Secretary

EXHIBIT "A"
KB HOME SOUTH BAY INC.
RESOLUTIONS ADOPTED BY THE BOARD OF DIRECTORS
AS OF JULY 26, 2011

Signing Authority

BE IT RESOLVED . . . , that the following resolutions shall supersede and replace any and all resolutions previously adopted with respect to the powers and authority herein granted including, but not limited to, resolutions adopted as of February 2, 2011, and any such prior authority is hereby revoked and restated in its entirety as follows:

RESOLVED FURTHER, that the following officers and/or employees of this Corporation be, and each hereby is, authorized to act on behalf of this Corporation; provided, however, that such authority shall be limited to such authority as may be provided herein below and to other ordinary course of business transactions relating to the operations of this Corporation as indicated hereinbelow:

Chris G. Apostolopoulos	President
Jeffrey McMullen	Senior Vice President, Land Acquisition
Ray Panek	Senior Vice President, Forward Planning
Chris Reder	Senior Vice President, Finance
Dan Auten	Vice President, Operations, Customer Service, Land Development
Marc Burnstein	Vice President, Sales and Marketing
Matthew Schenone	Assistant Secretary
Henryk Tay	Senior Director, Land Development
Steven Bull	Senior Director, Forward Planning
Katrina Mancillas	Director, Purchasing
Michelle Suth	Director, Studio
Gregory D. Wilson	Director, Operations
Michelle C. Adams	Escrow Manager
Dan Zwicker	Manager of Sales

RESOLVED FURTHER, that the following persons be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver any and all documents deemed by such person to be necessary or appropriate in connection with the acquisition, disposition, and development of bulk parcels of real property by this Corporation, including, but not limited to, land purchase and sale agreements, amendments, assignments, escrow instructions, grant deeds, promissory notes, deeds of trust, maps, and related agreements and documents:

Any one of:

Chris G. Apostolopoulos

Any two acting together:

Jeffrey McMullen

Ray Panek

Chris Reder

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver any and all documents deemed by such person necessary or appropriate in connection with this Corporation's project forward planning and entitlement activities including but not limited to, entitlement applications, subdivision improvement agreements, builder's certification of plans, specifications and site plans, easements, development agreements, declarations of covenants, conditions and restrictions, recorded notices, notices of commencement, permit applications, subdivision and tract maps and exhibits thereto and supporting documents, applications or other filings required to be filed with the Department of Real Estate of California, condominium plans, consultant agreements, and project bonds:

Chris G. Apostolopoulos
Jeffrey McMullen
Ray Panek
Chris Reder
Steven Bull



RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver any and all documents deemed by such person necessary or appropriate in connection with this Corporation's land improvement and development activities including but not limited to, builder's certification of plans, specifications and site plans, notices of commencement, permit applications, land development subcontracts, materials and supply contracts, and utility contracts:

Chris G. Apostolopoulos
Jeffrey McMullen
Ray Panek
Chris Reder
Dan Auten
Henryk Tay
Gregory D. Wilson

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver all contracts (including purchase and sale agreements, amendments, addendums and other ancillary documents forming a part of the contract), reservation agreements, escrow instructions, grant deeds, notes, deeds of trust, warranties, and other agreements and documents necessary or appropriate with respect to the sale and conveyance of title to residential dwellings standing in the name of this Corporation, including, but not limited to, any and all documents required by the Department of Housing and Urban Development, documents necessary to qualify for government or quasi-government sponsored loan programs including, but not limited to, developer, buyer and seller certifications, and other documents and instruments appropriate to cause this Corporation to transfer and convey such real property and related assets:

Chris G. Apostolopoulos
Jeffrey McMullen
Ray Panek
Chris Reder
Marc Burnstein

RESOLVED FURTHER, that the following persons be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver all notes, deeds of trust, agreements, contracts (including purchase and sale agreements, amendments, addendums and other ancillary documents forming a part of the contract) and escrow instructions in connection with the sale of residential dwellings standing in the name of this Corporation, including, but not limited to, any and all documents required by the Department of Housing and Urban Development, and other documents and instruments appropriate to cause this Corporation to transfer and convey such real property and related assets:

Michele Suth
Michelle C. Adams
Dan Zwicker

provided further, that the persons in this resolution are authorized to sign grant deeds only with at least one other person identified immediately above;

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver any and all documents deemed by him to be necessary or appropriate in connection with this Corporation's sales, marketing and real property management activities, including, but not limited to, master service agreements, vendor agreements, independent contractor sales agreements and supporting documents and offers of employment with this Corporation for sales personnel:

Chris G Apostolopoulos
Marc Burnstein

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver any and all master subcontract agreements, material purchase agreements, subcontract work agreements, and related documents with respect to the construction of improvements on real property:

Chris G. Apostolopoulos
Jeffrey McMullen
Ray Panek
Chris Reder
Dan Auten
Henryk Tay
Katrina Mancillas
Gregory D. Wilson

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver master consultant agreements, and related documents with respect to development of real property:

Chris G Apostolopoulos
Jeffrey McMullen
Ray Panek
Chris Reder
Dan Auten
Henryk Tay
Gregory D. Wilson
Steven Bull

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver any and all documents required in connection with this Corporation's customer service and new home warranty activities and other related business operations including, but not limited to, settlement agreements, purchase orders and subcontracts for labor and materials:

Chris G Apostolopoulos
Dan Auten

RESOLVED FURTHER, that any of the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver documents establishing bank accounts, financing arrangements and other ordinary course banking and financial arrangements:

Chris G Apostolopoulos
Chris Reder

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this Corporation to execute, acknowledge and deliver any and all documents required in connection with this Corporation's studio and showroom sales activities and related business operations:

Chris G Apostolopoulos
Michelle Suth

RESOLVED FURTHER, that the following person(s), acting alone, be, and each hereby is, authorized and empowered to act on behalf of this Corporation in its capacity as a member of any limited liability company or as a partner of any partnership in which this Corporation owns an interest:

Chris G Apostolopoulos

RESOLVED FURTHER, that the following persons, acting together, be, and each hereby is, authorized and empowered to act on behalf of this Corporation in its capacity as a member of any limited liability company or as a partner of any partnership in which this Corporation owns an interest:

Chris Reder
Jeffrey McMullen

RESOLVED FURTHER, that Chris G Apostolopoulos, President of this Corporation be, and he hereby is, authorized, empowered and directed, for and on behalf of this Corporation, to take such further actions and to do all such further things which he may deem necessary and appropriate to accomplish the purpose and to effectuate the intent of any of the foregoing resolutions with respect to this Corporation.

Storm Water Compliance Representative

RESOLVED FURTHER, that Henryk Tay, Senior Director, Land Development, be, and he hereby is, designated as the Company's Storm Water Compliance Representative for purposes of the Company's compliance with the storm water consent decree entered on July 23, 2008, and is authorized, empowered and directed to take such actions, prepare and execute such instruments, undertake and perform such inspections and reviews, and to do all such things which he may deem necessary and appropriate to accomplish compliance with the decree and the Company's policies, standards and requirements with respect to the decree.

RESOLVED FURTHER, that any and all documents executed or actions undertaken by any officers or employees listed in the foregoing resolutions between February 2, 2011 and the date hereof substantively within the scope of their authority as designated above be, and they hereby are, ratified, confirmed and approved.